

David Cosson
ATTORNEY AT LAW

2154 Wisconsin Ave, N.W.
Washington, D.C. 20007

Telephone (202) 333-5275
Telecopier (202) 333-5274

March 14, 2008

Via Electronic Filing in CC Doc. No. 96-45

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Mid-Rivers Telephone
Cooperative, Inc. for Waiver of the Definition of
"Study Area" of the Appendix-Glossary of Part 36
of the Commission's Rules, Petition for Waiver of
Sec. 69.3(e)(11) of the Commission's Rules. CC
Doc. No. 96-45

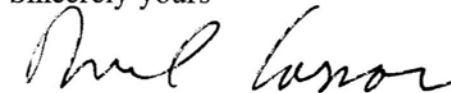
Dear Ms. Dortch:

Attached please find the Petition of Waiver of the Definition of "Study Area" being
filed by Mid-Rivers Telephone Cooperative, Inc. The Petition also includes a request for
waiver of Section 69.3(e)(11) of the Commission's Rules, if necessary.

The requisite filing fee has been sent, via overnight delivery to US Bank, A copy of
FCC Form 159 Remittance Advice (redacted) is attached.

Please contact me if there are any questions regarding this matter.

Sincerely yours



David Cosson
Counsel to Mid-Rivers Telephone Cooperative, Inc.

Cc: Katy King
Gary Seigel
Jennifer McKee

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Mid-Rivers Telephone Cooperative, Inc.

Petition for Waiver of the Definition of
“Study Area” of the Appendix-Glossary
of Part 36 of the Commission’s Rules;
Petition for Waiver of Section
69.3(e)(11) of the Commission’s Rules

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CC Docket No. 96-45

PETITION FOR WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules,¹ Mid-Rivers Telephone Cooperative, Inc. (“Mid-Rivers” or “Petitioner”) by its attorney, requests a waiver of the definition of “study area” contained in the Appendix—Glossary of Part 36 of the Commission's Rules. Specifically, Mid-Rivers seeks authority to include its Terry, Montana exchange in its study area. Mid-Rivers also requests waiver of Section 69.3(e)(11) of the Commission’s Rules to the extent the Commission concludes it is applicable.

I. INTRODUCTION AND SUMMARY

Mid-Rivers owns and operates, as a cost study ILEC, approximately 10,750 access lines

¹ 47 C.F.R. § 1.3.

in 26 exchanges in an area comprising 30,000 square miles in eastern Montana and a small portion of North Dakota. Mid-Rivers' CLEC operations include an additional 14,725 access lines in 7 exchanges (including Terry).

Petitioner requests this waiver in order to extend Mid-Rivers' existing study area in Montana to include the Terry, Montana exchange. In February 2002, Mid-Rivers filed a petition with the Commission asking that it be declared an ILEC in Terry pursuant to Section 251(h)(2) of the Communications Act. That Petition was granted in an Order released October 11, 2006.² That Order left Mid-Rivers' Terry exchange subject to competitive LEC non-dominant regulation, but stated that the Commission would review Mid-Rivers' regulatory classification once a study area waiver request was filed.³ By this Petition, Mid-Rivers requests that its Terry exchange be included in the dominant carrier regulation applicable to its existing ILEC exchanges.⁴

As will be discussed in more detail below, the conditions that the Commission considers for a study area waiver are or will all be satisfied in this case: (1) the inclusion of the area in Mid-Rivers' study area will not adversely impact the Universal Service Fund ("USF"), (2) a

² *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Report and Order, WC Doc No. 02-78, 21 FCC Rcd 11506 (2006) ("Mid-Rivers Order").

³ *Id.* at para. 35.

⁴ The *Mid-Rivers Order* found that Qwest qualified for non-dominant carrier treatment in Terry, but declined to grant the request in Qwest's comment that the Commission forbear from applying the Section 251 and 271 unbundling and resale obligations to it because it had not filed a separate petition for such relief. Qwest has now filed such a petition and the matter is pending before the Commission. *Qwest Corporation's Petition for Forbearance Under 47 U.S.C. 160(c) From Sections 251(c) and 271(c) and From Incumbent Local Exchange Carrier Treatment in the Terry Montana Local Exchange*, WC Doc. No. 07-9.

statement will be obtained from the Montana PSC that it does not object to the change of study areas, and (3) the public interest will be served by granting the waiver.

Because its ILEC and CLEC customers alike are served by the same entity, Mid-Rivers will not provide anti-slamming notices pursuant to Section 64.1120 of the Commission's rules.

II. WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED.

Petitioner seeks a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high cost support,⁵ the acquisition of substantially all of Qwest's customer base by Mid-Rivers involved no voluntary actions by Qwest, and Mid-Rivers' actions were not motivated by an intent to increase its high cost support.

A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.⁶ Although Section 54.305 of the Commission's rules is not applicable to this Petition because there was no sale or transfer of exchanges,⁷ the extension of Mid-Rivers' study

⁵ See, *MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁶ See, e.g., *U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995).

⁷ *M&L Enterprises, Inc. d/b/a Skyline Telephone Company, Petition for Waiver of*

area will produce no such adverse impact.

Mid-Rivers estimate of the impact on USF of grant of its Petition begins with the loss of \$258,588 annually in high cost model support that it is currently projected to receive for the Terry exchange.⁸ Mid-Rivers estimates that, upon grant of its Petition, it will be eligible for an additional \$55,000 in High Cost Loop Support, \$12,000 in Local Switching Support, and \$31,000 in Interstate Common Line Support. The combination of the loss and the increases is a net reduction in annual universal service high cost support of approximately \$161,000 in 2008.

Because there will be a net decrease in USF support to Mid-Rivers there can be no concern with the question of an aggregated one percent increase of annual high cost support.⁹ Accordingly, this transaction is a non-event for purposes of the USF.

B. State Commission Approval.

Petitioner will request a statement from the Montana Public Service Commission that it does not object to the grant of this Petition. The PSC filed comments in support of Mid-Rivers' Section 251(h)(2) petition.¹⁰

C. Granting The Waiver Is In The Public Interest.

Sections 36.611, 36.612 and 69.2 of the Commission's Rules, Order, 19 FCC Rcd 6761 (2004) (para. 16.).

⁸ Universal Service Administrative Company, ("USAC") 2Q2008 Administrative Filings, Appendix HC15, p.42, l.4896. www.universalservice.org

⁹ USAC's most recent projections show annual high cost support approaching \$4.6 billion. USAC 2Q2008 Administrative Filings, Appendix HC01.

¹⁰ Letter from Gary Feland, Chairman, Montana Public Service Commission to Marlene H. Dortch, FCC, June 5, 2002; Comments of Montana Public Service Commission in WC Doc. No. 02-78, Dec. 21, 2004; Reply Comments, Jan. 14, 2005.

As Mid-Rivers explained in detail in the ILEC proceeding, substantially all of the subscribers in Terry changed to Mid-Rivers' service because Qwest had relegated Terry to an extreme telecommunications backwater where little maintenance and no investment in upgrading or local contact occurred.¹¹ Mid-Rivers constructed all new facilities that now cover the entire exchange and provide high quality basic and advanced services responsive to the needs of the community.¹² Including the Terry exchange in Mid-Rivers' study area will promote the public interest because the citizens of Terry will continue to receive an evolving level of high quality services from a locally-based carrier specializing in meeting the communications needs of the rural community. A public interest finding for this Petition would be consistent with the Commission's finding that grant of Mid-Rivers' petition for ILEC status met the public interest requirement of Section 251(h)(2)(C).¹³

III. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.

Mid-Rivers also requests a waiver of Section 69.3(e)(11), if necessary, in order to allow it to include the Terry access lines, revenues and investment in the NECA tariff process. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access

¹¹ *Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. An Incumbent Local Exchange Carrier in Terry, MT*, Petition of Mid-Rivers Telephone Cooperative, Inc., Feb. 5, 2002, pp 1-2.

¹² "In building a network in this area, Mid-Rivers has done exactly what the Act contemplated." Reply Comments of Montana Public Service Commission in WC Doc. No. 02-78, Jan. 14, 2005.

¹³ *Mid-Rivers Order* at para. 16.

tariff filing effective date following the merger or acquisition. Because there is no merger or acquisition, per se, Section 69.3(e)(11) does not appear applicable. Should the Commission conclude otherwise however, the rule may preclude Mid-Rivers from including the Terry exchange in the NECA common line tariff until the next annual access tariff filing effective date following the grant of the Petition. This would require Mid-Rivers to file interstate ILEC tariffs for Terry, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of additional access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation.¹⁴ Because Mid-Rivers' interstate switched access rates are currently set at the NECA tariff level pursuant to Section 61.26(e) of the Commission's Rules, interexchange carrier customers will not experience any increase in rates as a result of inclusion of the Terry lines in the NECA tariff.

In light of the fact that Mid-Rivers is a small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Mid-Rivers requests a waiver of Section 69.3(e)(11), to the extent necessary, for it to add the Terry exchange to its current study area and include the lines in the NECA pools upon approval of this Petition.¹⁵

¹⁴ See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).

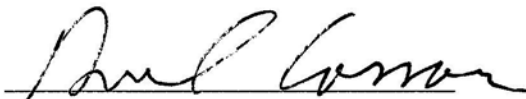
¹⁵ Mid-Rivers will request NECA to provide a statement for the record that it does not object to the addition of these lines to the pool.

V. CONCLUSION

Good cause having been shown, Mid-Rivers respectfully requests that this Petition be granted on an expedited basis.

Respectfully submitted,

Mid-Rivers Telephone Cooperative, Inc.

By: 
David Cosson

Its Attorney

2154 Wisconsin Ave, N.W.
Washington, DC 20007
(202) 333-5275

March 14, 2008

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

(1) LOCKBOX # 979091		SPECIAL USE ONLY FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Sylvia Lesse		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$7,365.00	
(4) STREET ADDRESS LINE NO. 1 2154 Wisconsin Avenue NW			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20007
(9) DAYTIME TELEPHONE NUMBER (include area code) (202) 333-5273		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0010900918		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Mid-Rivers Telephone Cooperative, Inc.			
(14) STREET ADDRESS LINE NO. 1 904 Avenue C			
(15) STREET ADDRESS LINE NO. 2 PO Box 280			
(16) CITY Circle		(17) STATE MT	(18) ZIP CODE 59215
(19) DAYTIME TELEPHONE NUMBER (include area code) (406) 485-3301		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0001646587		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE BEA	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE \$7,365.00	FCC USE ONLY	
(28A) FCC CODE 1	(29A) FCC CODE 2		
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1	(29B) FCC CODE 2		
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Sylvia Lesse</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u>Sylvia Lesse</u> DATE <u>3/14/08</u>			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
ACCOUNT NUMBER <u>[REDACTED]</u>		EXPIRATION DATE <u>[REDACTED]</u>	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE <u>Sylvia Lesse</u>		DATE <u>3/14/08</u>	